THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on :04.04.2007

+ **WP(C) No. 2451/2007**

MAHARAM SINGH & OTHERS ...Petitioners

- versus -

ELECTION COMMISSION OF INDIA & OTHERS ...Respondents

Advocates who appeared in this case:

For the Petitioner	:	Mr A.S. Chandhiok, Sr Advocate with Mr V.K. Rao, Mr Ravi Sikri, Mr Saket Sikri and Ms Sonia Arora
For the Respondent No.2	:	Mr S Sirish Kumar.
For the Respondent No.1	:	Mr P.R. Chopra .
For the Respondent/MCD	:	Mr Anoop Bagai, Standing Counsel (MCD) with Ms Pratibha Sharma.
For the Respondent No.3	:	Mr M.Y. Khan.
For the Intervenor	:	Mr Rajesh Kr Gogna .
For the Respondent/ State Election Commission	:	Mr Suresh Tripathi.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. This petition has been filed by five persons who say that there are about 4,500 other similarly placed persons whose names have been deleted from the electoral roll of old ward No. 30 and new ward No.60 known as

Saraswati Vihar and that they will not be permitted to vote from this ward in the forthcoming Municipal Corporation of Delhi Election to be held on 5.4.2007.

2. The prayers in this petition are, inter alia, as under:

> "i) Issue a Writ of Mandamus directing the respondents to allow the petitioners and the persons shifted from Bannu Wal Nagar, JJ Clusters (Bannu Wal Nagar) falling in ward No.60 to vote as voters in the said constituency and further direct the Respondents to provide the polling booths within a radius of 2.5 Kms from the place where they have been shifted or in the alternative.
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> ii) make arrangements for free transportation to and fro from their place of shifting to the respective polling booths in ward No.60."

Essentially what the petitioners are seeking is that they be permitted to vote in the forthcoming election : either by providing them with polling booths located in the areas to which they have been shifted or by providing free transportation to and fro the polling booths in ward No.60 (Saraswati Vihar).

3. Mr Chandhiok, the learned Senior Counsel appearing on behalf of the petitioners raised four issues. First of all, referring to the electoral roll for the year 2007 issued by the Electoral Registration Officer of the Election Commission of India, Mr Chandhiok submitted that the details of the revision of the roll are given as under:

1. DETAILS OF REVISION	
Year of Revision : 2007 Qualifying Date : 01.01.2007 Type of Revision : Special Summary Revision Date of Publication : 06.10.2006	Roll Identification : Basic roll of intensive revision, 2002 integrated with all supplements preceding special summary revision, 2007.

Mr Chandhiok submitted that the date of publication has been shown as 6.10.2006 and the qualifying date has been shown as 1.1.2007. According to him, this is contrary to law inasmuch as the qualifying date must be prior to the date of publication.

4. He submitted that the electoral rolls for the legislative assembly constituencies have been adopted by the MCD on 7.2.2007 by virtue of the provisions of Section 7E of the Delhi Municipal Corporation Act (hereinafter referred to as the "DMC Act"). In this context, the second submission made by Mr Chandhiok is that the final electoral roll ought to have been published after 7.2.2007 when the MCD adopted the roll for the Assembly Constituencies. But, he submitted, no electoral roll has been finalised or published after 7.2.2007.

5. The third submission made by Mr Chandhiok is that the petitioners' names appeared in the list of ward No.30 (now ward No.60). But they have now been deleted as is clear upon an examination of Annexure P-2. With reference to Section 22 of the Representation of the People Act, 1950 (hereinafter referred to as "the 1950 Act"), he submitted that before any voter's name is deleted under this provision, as per the proviso contained therein, a reasonable opportunity of being heard is required to be granted to the said voter.

He then referred to Section 7F of the DMC Act and the proviso contained therein which is in *pari materia*. The sum and substance of the argument is that before any addition or deletion is done under Section 22 or Section 7F mentioned above, a notice must be given to the elector so as to provide him with a reasonable opportunity of being heard. If such notice is not given and consequently no opportunity of being heard is granted then the deletion under Section 22 and / or Section 7F would be void. He submitted that in the present case it is an admitted position that no notice was issued individually to any of the petitioners and, therefore, the deletion of their names and of other persons similarly situated would be void. Accordingly, Mr Chandhiok submitted that the petitioners and other similarly situated persons must be permitted to vote.

6. The fourth and last submission made by Mr Chandhiok is with regard to a circular dated 11.2.2004 issued by the Election Commission of India on the subject of "Restriction or eviction, demolition of unauthorised structure etc". This circular was issued in connection with the various drives undertaken for demolition and eviction of unauthorised structures which included Jhuggi-Jhopri Clusters and relocation of people consequent thereupon. Mr Chandhiok referred to the following passages in the said circular :

> "Thus, whenever any eviction or demolition drive is taken up by a civic agency leading to dislocation of existing electors from their ordinary place of residence, the relevant part of the electoral roll of the Assembly constituency necessarily gets affected and becomes defective in as much as a large number of such

> dislocated electors lose their right to vote at the polling stations to which they have been assigned."
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> "Any election held on the basis of these defective rolls would thus deprive a substantially large number of electors who have been displaced from their places of ordinary residence of their franchise."
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> "In such cases of unavoidable dislocation, the Government shall place before the Commission all relevant facts, including a suitable rehabilitation plan, to enable the commission to give appropriate orders in regard to the corrective steps to be taken by the electoral authorities concerned to ensure that such dislocated electors are not deprived of their voting rights."

Referring to the above extracts from the said circular, Mr Chandhiok submitted that on account of dislocation consequent upon action taken by Government authorities, the people should not suffer disenfranchisement. In view of these submissions, Mr Chandhiok argued that the petitioners ought to be permitted to vote in the election on 5.4.2007.

7. Mr Chopra, who appeared on behalf of the Election Commission of India, submitted that the provisions of Section 22 of 1950 Act and Section 7F of the DMC Act would not apply inasmuch as the present case was not one of correction of entries but was a case of revision of the electoral roll undertaken under Section 21 of the 1950 Act. He submitted that wide publicity was given to the revision of the electoral roll both in the print media as well as on television channels and over the radio. The draft electoral roll was published on 6.10.2006. The public was notified that they could file their claims and objections between 6.10.2006 to 26.10.2006. Ultimately, the final publication

of the electoral roll, after dealing with all the claims and objections, was done on 1.1.2007. The qualifying date that is mentioned in the final list refers to the age of the voters on that date. The qualifying date has reference to the provisions of Section 14(b) of the 1950 Act read with Section 19(a) thereof which clearly indicates that persons who had crossed the age of 18 years on 1.1.2007 would be eligible to vote as per the list published on 1.1.2007. He submitted that, therefore, the contention raised by Mr Chandhiok that the date of publication has to be subsequent to the qualifying date is not tenable. He urged that the statutory provisions themselves indicate that the publication of the final list would specify the qualifying date as the Ist of January of the year in which the list is published. The present electoral roll was published on 1.1.2007 (i.e. in 2007), therefore the qualifying date would have to be 1.1.2007.

8. With regard to the second submission that the final electoral roll must be published after 7.2.2007, Mr Chopra submitted that there is no such provision. In any event, he submitted that the MCD did not adopt the electoral roll published by the Election Commission on 7.2.2007 but on 1.3.2007. In fact, a notification was issued on 1.3.2007 by the State Election Commission under Section 7E of the DMC Act read with the provisions of Rule 27 of the Delhi Municipal Corporation (Preparation of Electoral Rolls) Rules 1970. By virtue of this notification, the State Election Commissioner of the National Capital Territory of Delhi directed that the electoral roll of the Assembly Constituencies which relate to all the 272 wards of the MCD shall be the

electoral roll for the said wards for the purposes of the ensuing general election to the Municipal Corporation of Delhi. There is no provision, according to Mr Chopra, for any further final rolls being published. Once the same has been adopted by the State Election Commission, nothing further requires to be done.

9. With regard to the third submission of Mr Chandhiok, it was contended on behalf of Mr Chopra that since this was a case of a revision of the electoral roll and not a correction of entries therein, there was no question of giving any individual notices to the electors. Insofar as the revision itself was concerned, sufficient publicity had already been given in the print media as well as on television channels and over the radio indicating the specific dates on which the persons affected could file their claims / objections. Any aggrieved person could file a claim / objection. It is only thereafter that the final list was published on 1.1.2007. In any event, the publication of the final list on 1.1.2007 also did not close the issue inasmuch as any person who did not find his name in the electoral roll could have approached the electoral officers by filing an appropriate application for inclusion of his / her name. It was incumbent upon the individuals to have carried out this exercise. Apparently, the petitioners have not carried out this exercise and, therefore, according to Mr Chopra, this petition cannot be entertained at this late stage, particularly, when the election is fully underway and polls are to be held in couple of days' time.

10. With regard to the fourth contention raised by Mr Chandhiok, it was submitted on behalf of Mr Chopra that the circular referred to was limited to the

general election of 2004 and had nothing to do with the revision of the roll done in present case. In any event, the petitioners had ample opportunity to seek correction of any deficiencies that may have been noticed by them in the electoral rolls. He further submitted that the circular that was issued in 2004 was not in respect of any revision of the electoral roll but was issued on account of dislocation of persons whose names appeared in the electoral roll. In the present case, on the revision of the roll being carried out, the petitioners and other similarly situated persons were found to be not ordinarily resident in ward No.30 (old) and Ward No.60 (new) (Saraswati Vihar) Therefore, the petitioners cannot place reliance on the said circular issued in 2004.

11. Mr Tripathi, who appears on behalf of the State Election Commission, submitted that Section 7G (3) of the DMC Act constituted a bar to any change in the electoral roll after the last date of making nominations had gone by. He referred to the decisions of the Supreme Court in the cases of ***Narendra Madivalapa Kheni v Manikrao Patil and Others : (1977) 4 SCC 16 (paragraph 16) and Baidyanath Panjiar v Sitaram Mahto and others :*** (***1969) 2 SCC 447 (paragraph 6)***. He also referred to the case of ***Lakshmi Charan Sen and Others v A.K.M. Hassan Uzzaman & Others : (1985) 4 SCC 689 (paragraph 16)*** to indicate that voting rights are individual rights of a voter and it is for each voter to make a grievance with respect to his right. He submitted that the earlier two decisions of the Supreme court were in respect of the parallel provisions contained in Section 23(3) of the 1950 Act.

Supplementing the arguments advanced by Mr Chopra, Mr Tripathi submitted that on this additional ground also the writ petition ought not be entertained at this stage particularly as the last date of filing nominations was over and the polls are to be held on 5.4.2007.

12. I shall now deal with the four submissions made by Mr Chandhiok. The first submission is that the date of publication of the electoral roll should be subsequent to qualifying date. This submission is not tenable. As mentioned by Mr Chopra, the qualifying date has reference to Section 14 (b) of the 1950 Act. Section 14 reads as under:-

> "**14. Definitions.** — In this Part, unless the context otherwise requires, —
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> (a) "constituency" means as Assembly constituency;
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> (b) "qualifying date", in relation to the preparation or revision of every electoral roll under this Part, means the 1st day of January of the year in which it is so prepared or revised.
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> Provided that "qualifying date" in relation to the preparation or revision of every electoral roll under this Part in the year 1989, shall be the 1st day of April, 1989."

Section 14 falls within Part III of the said Act, which deals with electoral rolls for assembly constituencies. A reading of Section 14 (b) clearly indicates that "qualifying date" in relation to the preparation or revision of every electoral roll under the said Part III has reference to the first day of January of the year in which it is so prepared or revised. The year of revision, as indicated in the

details of revision referred to above, is 2007. Consequently, the qualifying date would, in view of the clear provisions of Section 14 (b), be 01.01.2007. That is exactly the position in the present case. The "qualifying date" is always the first of January. Even if the electoral roll is revised and published on any date after the first of January, the "qualifying date" would still be the first of January of that year. It must also be remembered that the date of publication of the final revised electoral roll is 1.1.2007 and not 6.10.2006 which was the date of publication of the draft roll.

13. It is further necessary to note that the expression "qualifying date" has relevance only with regard to the age of an elector, which is a condition for registration. Section 19 of the 1950 Act reads as under:-

> "**19. Conditions of registration.** — Subject to the foregoing provisions of this Part, every person who —
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> (a) is not less than eighteen years of age on the qualifying date, and
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> (b) is ordinarily resident in a constituency,
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> shall be entitled to be registered in the electoral roll for that constituency."

It is apparent that a person, who seeks registration as an elector, must be not less than 18 years of age on the qualifying date, apart from the fact that he must be ordinarily resident in that constituency. In the present case, the question of age does not arise at all and, therefore, reference to qualifying date is meaningless. On the other hand, it is necessary that a person, who seeks

registration in the electoral roll of a constituency, must be ordinarily resident in that constituency. The admitted position is that the petitioners and others, whose names have been deleted, were shifted from the said ward and are not ordinarily resident in the constituency. It is another matter that consequent upon re-location, such persons ought to have been registered as electors, if they were otherwise entitled, in constituencies where they are ordinarily resident. However, insofar the present ward No.60 (Saraswati Vihar) is concerned, the petitioners are not ordinarily resident therein and, therefore, they would not be entitled to be registered in the electoral roll for that ward.

14. The submission that the electoral roll must be published after the adoption of the assembly rolls by the MCD is also without any basis. By virtue of the notification dated 01.03.2007 the electoral roll of the assembly constituencies, which relate to the 272 wards of the Municipal Corporation of Delhi, were adopted for the purposes of the ensuing general election to the Municipal Corporation of Delhi. Section 7E (1) of the DMC Act permits the adoption of the electoral rolls of assembly constituencies for the purposes of election for the Municipal Corporation of Delhi. Section 7E, so much, as is relevant, reads as under:-

> "**7E. Preparation and revision of electoral rolls.** — (1) The electoral roll for each ward shall be prepared before each general election in such manner as may be prescribed by rules by reference to the qualifying date and shall come into force immediately upon its final publication in accordance with the rules made for the purpose:

> Provided that if the Election Commission is satisfied that, instead of preparing a fresh electoral roll of a ward before a general election, it would be sufficient to adopt the electoral roll of the assembly constituency for the time being in force as relates to the ward it may, by order, for reasons to be specified therein, direct that the electoral roll of the the assembly constituency for the time being in force relates to the ward shall, subject to any rules made for the purpose, be the electoral roll of the ward for the general election.
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> (2) xxxxxxxx.
>
> (3) xxxxxxxx."

There is no mention of any publication of any final electoral roll after adoption of the electoral roll assembly constituencies. Therefore, there is no infirmity in the non-publication of any "final" electoral roll by the Municipal Corporation of Delhi after issuance of the notification dated 01.03.2007, whereby the electoral rolls of the assembly constituencies were adopted.

15. With regard to the submission that before deletion of the names of the petitioners and other similarly placed persons, individual notices ought to have been issued, there are two answers. The first answer is that the present case involves a revision of the electoral roll under Section 21 of the 1950 Act and is not a case falling under Section 22 of the 1950 Act which relates to correction of entries in electoral rolls. Sections 21 and 22 read as under:-

> "**21. Preparation and revision of electoral rolls** — (1) The electoral roll for each constituency shall be prepared in the prescribed manner by reference to the qualifying date and shall come into force immediately upon its final publication in accordance with the rules made under this Act.

(2) The said electoral roll—

(a) shall, unless otherwise directed by the Election Commission for reasons to be recorded in writing, be revised in the prescribed manner by reference to the qualifying date—

(i) before each general election to the House of People or to the Legislative Assembly of a State; and

(ii) before each bye-election to fill a casual vacancy in a seal allotted to the constituency; and

(b) shall be revised in any year in the prescribed manner by reference to the qualifying date if such revision has been directed by the Election Commission:

Provided that if the electoral roll is not revised as aforesaid, the validity or continued operation of the said electoral roll shall not thereby be affected.

(3) Notwithstanding anything contained in sub-section (1), the Election Commission may at any time, for reasons to be recorded, direct a special revision of the electoral roll for any constituency or part of a constituency in such manner as it may think fit.

Provided that subject to the other provisions of this Act, the electoral roll for the constituency, as in force at the time of the issue of any such direction, shall continue to be in force until the completion of the special revision so directed.

22. Correction of entries in electoral rolls.— If the electoral registration officer for a constituency, on application made to him or on his motion, is satisfied after such inquiry as he thinks fit, that any entry in the electoral roll of the constituency—

(a) is erroneous or defective in any particular,

(b) should be transposed to another place in the roll on the ground that the person concerned has changed

his place of ordinary residence within the constituency, or

(c) should be deleted on the ground that the person concerned is dead or has ceased to be ordinarily resident in the constituency or is otherwise not entitled to be registered in that roll, the electoral registration officer shall, subject to such general or special direction, if any, as may be given by the Election Commission in this behalf, amend, transpose or delete the entry:

Provided that before taking any action on any ground under clause (a) or clause (b) or any action under clause (c) on the ground that the person concerned has ceased to be ordinarily resident in the constituency or that he is otherwise not entitled to be registered in the electoral roll of that constituency, the electoral registration officer shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him."

Reading the above provisions, it is no doubt true that if a correction of an entry in the electoral roll is undertaken under Section 22 and it leads to the deletion of any entry then, before such action is taken, a reasonable opportunity of being heard ought to be granted to the affected person. Similar to Section 22 of the 1950 Act are the provisions of Section 7F of the DMC Act. But the action undertaken by the respondents and, in particular, the Election Commission of India, was not one under Section 22 for correction of entries in the electoral rolls but one under Section 21, which relates to preparation and revision of electoral rolls. Therefore, the first answer is that the grievance with regard to non-issuance of individual notices to the petitioners is not well-founded. This

is so because the exercise was done not under Section 22 of the 1950 Act but under Section 21 thereof.

16. The second answer is that, in any event, sufficient notice was given to all the electors by wide publicity in the print media as well as through television and over the radio. Various such public notices have been placed before me, which have been issued by the Election Commission from time to time. It is clear that the draft electoral roll was published on 06.10.2006. Claims and objections were invited and the same could be filed between 06.10.2006 and 26.10.2006. It is only after these claims and objections had been examined and disposed of by the Electoral Registration Officers on or about 20.11.2006, that the final publication of the electoral roll was done on 01.01.2007. Therefore, examined in this light also, it cannot be said that the petitioners did not have a reasonable opportunity of being heard. If they were aggrieved by the revision in the electoral rolls, as per the draft published on 06.10.2006, they could have filed their claims and objections. It was also notified by the Election Commission that any person could have his name entered in the electoral roll or deleted or amended. The members of the public were also required to fill in the appropriate forms before 26.10.2006 so as to bring about the aforesaid addition, deletion or amendment. Form No.6 was indicated as the relevant form for addition of the name of any individual, who would be of over 18 years of age on 01.01.2007. Form No.6 was also indicated as the form for inclusion of the name on account of transfer/ relocation to a new

address. Form No.7 was to be used for deletion of the name from the old address on transfer / relocation or for any other reason and form No.8 was specified for bringing about any amendments in the entries in the electoral rolls. Therefore, there was ample opportunity for members of the public to have their names included in the electoral roll of the particular constituency, in which they were ordinarily resident.

17. With regard to the circular of 2004 issued by the Election Commission, I am in agreement with the submission made by Mr Chopra that the same pertains to the general election of 2004 and has nothing to do with the present election or the special revision conducted by the Election Commission in 2006-2007. Furthermore, the circular of 2004 was issued in the context of relocation and consequent deletion of the names and was not concerned with the case of revision of the electoral roll. The present case is one of the revision of the electoral roll and, therefore, that circular would have no relevance.

18. Lastly, it must be noted that this writ petition has been filed after the last date of making nominations for the MCD election had elapsed. Essentially, what the petitioners seek is inclusion of their names in the electoral roll. If that be the case, Section 7 G of the DMC Act would apply. The same reads as under:-

> "**7G. Inclusion of names in electoral rolls.** — (1) Any person whose name is not included in the electoral roll of a ward may apply to the electoral registration officer for the inclusion of his name in that roll.

(2) The electoral registration officer shall, if satisfied that the applicant is entitled to be registered in the electoral roll, direct his name to be included therein:

Provided that if the applicant is registered in the electoral roll of any other ward, the electoral registration officer shall inform the electoral registration officer of the other ward and that officer shall, on receipt of the information, strike off the applicant's name from that roll.

(3) No amendment, transposition or deletion of any entry shall be made under Section 7F and no direction for the inclusion of a name in the electoral roll of a ward shall be given under this section after the last date for making nominations for an election in that ward and before the completion of that election."

Sub-Section (3) of Section 7G makes it clear that no amendment/ transposition or deletion of any entry shall be made under Section 7F (which is *pari materia* to Section 22 of the 1950 Act) and no direction for the inclusion of a name in the electoral roll of a ward shall be given under this section "*after the last date for making nominations for an election in that ward and before the completion of that election."* It is an admitted position that the election notification was issued on 10.03.2007. The last date of nominations was 17.03.2007. The date of poll is 05.04.2007 and, therefore, it is clear that the writ petition has been filed after the last date for making nominations and before the completion of the election. Section 7G (3) prohibits any amendment, transposition or deletion or inclusion of a name in the electoral roll between the last date of making nominations and the date of completion of the election. This writ petition, therefore, cannot be entertained on this ground also.

19. It must also be noted that if the deletion of the names of the petitioners is to be treated as one falling under Section 22 of the 1950 Act or under Section 7F of the DMC Act, then the petitioners had the remedy of appeal under Section 24 of the 1950 Act or under Section 7H of the DMC Act. That remedy has also not been availed of by these petitioners.

20. For all these reasons, this writ petition is liable to be dismissed. However, it would be open to the petitioners to approach the authorities after the completion of the MCD election for inclusion of their names in the wards in which they are ordinarily resident. On such applications being made in the appropriate form, the competent authorities shall deal with the same in accordance with law.

With these directions, this writ petition is dismissed. No order as to costs.

BADAR DURREZ AHMED
(JUDGE)

April 04, 2007
SR / M